



PATENT APPLICATION

PATENT AND TRADEMARK OFFICE

BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of

Yukuo KATAYAMA

Application No.: 10/538,807

On Appeal from Group: 3749

Filed: June 13, 2005

Examiner: RINEHART, K.

For: METHOD FOR FEEDING A MIXTURE COMPRISING A BURNABLE SOLID AND
WATER

Docket No.: 124237

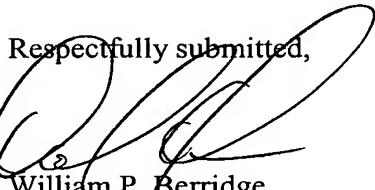
APPEAL BRIEF TRANSMITTAL

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Respectfully submitted,

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BRIEF ON APPEAL

Appeal from Group 3749

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I. REAL PARTY IN INTEREST

The real party in interest for this appeal and the present application is Yukuo Katayama by virtue of being the sole inventor.

II. RELATED APPEALS AND INTERFERENCES

There are no prior or pending appeals, interferences or judicial proceedings, known to Appellant or Appellant's representative that may be related to, or that will directly affect or be directly affected by or have a bearing upon, the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-24 are on appeal.

Claims 1-24 are pending.

No claims are allowed.

Claims 8 and 19 are objected to only for being dependent from a rejected base claim, but are otherwise allowable.

Claims 1-7, 9-18 and 20-24 are rejected.

IV. STATUS OF AMENDMENTS

No Amendment After Final Rejection has been filed. The claims stand as amended by Appellant's March 12, 2007 Amendment.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is the sole independent claim in the application. Claim 1 is directed to a method for feeding a mixture comprising a burnable solid and water (see, e.g., page 7, lines 6-32) to a combustion furnace or gasification reactor (Fig. 1, element 13 and page 8, lines 1-4), comprising: heating the mixture with a heater (Fig. 1, elements 5 and 7-10, page 10, lines 20-35) to convert at least a part of the water in the mixture into a form of steam (page 11, lines 1-5); and feeding the whole mixture to a combustion furnace or gasification reactor (Fig. 1, element 13, and page 10, lines 5 and 6), wherein the whole mixture is transferred between an inlet of the heater and the combustion furnace or gasification reactor by a pump (Fig. 1, element 2 and page 6, lines 2-5), a discharge pressure at the pump is higher than an inner pressure in the combustion furnace or gasification reactor at least by 1.5 MPa and not higher than 22.12 Mpa (page 9, line 36-page 10, line 2), a flow rate of said mixture with at least a part of the water being in a form of steam is from 6 to 50 m/s in a pipe in the heater and in a pipe between an outlet of the heater and an inlet of the combustion furnace or gasification reactor (page 8, lines 29-36), and an inner diameter of the pipe in the heater becomes larger gradually or stepwise along a direction of the flow of the mixture, so that the water in the mixture is gradually or stepwise converted into a form of steam (page 9, lines 5-15).

The remaining claims are argued as allowable for at least their dependence on claim 1. Several of these claims recite specific ranges of parameters for the method.

VI. GROUNDΣ OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are presented for review:

- 1) Claims 1-7, 9-18 and 21-24 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,153,427 to Bissett et al. (hereinafter "Bissett") in view of U.S. Patent No. 3,476,494 to Buchanan et al. (hereinafter "Buchanan").
- 2) Claim 20 is rejected under 35 U.S.C. §103(a) as being unpatentable over Bissett as applied to claim 1, and further in view of U.S. Patent No. 5,657,704 to Schueler.

VII. ARGUMENT

The Office Action rejects the pending claims as having been obvious in view of the applied references. However, with respect to at least claim 1, the Examiner has improperly applied the law relating to obviousness. Proper application of the law, and reasonable interpretation of the references, demonstrates that the relevant standard for obviousness has not been met, and that the claimed subject matter is allowable over the applied references.

A. BISSETT WOULD NOT REASONABLY HAVE SUGGESTED ALL OF THE FEATURES THAT THE OFFICE ACTION ASSERTS

The Office Action, on page 2, rejects claims 1-7, 9-18 and 21-24 under 35 U.S.C. §103(a) as being unpatentable over Bissett in view of Buchanan. However, Bissett in view of Buchanan cannot reasonably be considered to have suggested at least the combination of all of the features positively recited in claim 1.

1. Bissett Would Not Have Suggested Feeding The Whole Mixture To A Combustion Furnace Or Gasification Reactor

Independent claim 1 recites, among other features, heating the mixture with a heater to convert at least a part of the water in the mixture into a form of steam; and feeding the whole mixture to a combustion furnace or gasification reactor. Contrary to the assertions made in the Office Action, the entrained bed dryer (element 26, Fig. 1 of Bissett) cannot reasonably be considered to correspond to a combustion furnace or a gasification reactor, as positively recited in the pending claims.

Bissett teaches an apparatus and method for feeding coal into a coal gasifier. Central to the invention disclosed in Bissett is that a coal-water slurry is pumped to the desired pressure and then the coal is "dried" prior to feeding the coal into the gasifier by contacting the slurry with superheated steam in an entrained bed dryer for vaporizing the water in the slurry (Abstract, emphasis added).

With reference to, for example, col. 3, lines 53-56, the Office Action asserts that Bissett can reasonably be considered to teach some feature which is alleged to correspond to the recited feature of heating the mixture with a heater to convert at least a part of the water in the mixture into a form of steam; and feeding the whole mixture to a combustion furnace or gasification reactor. The analysis of the Office Action with respect to this feature fails for at least the reason that the entrained bed dryer (element 26 in Fig. 1) is neither a combustion furnace nor a gasification reactor, as positively recited in the pending claims.

Bissett discloses that the slurry mixture shown, for example, entering entrained bed dryer 26 via nozzle 36 is dried in the entrained bed dryer (see, e.g., col. 2, lines 52-58). Bissett goes on to state that "[t]he 'dried' coal and the steam are passed out of the chamber through an exit adjacent to the opposite end of the chamber into a separator where the coal is separated from the steam and then conveyed through a suitable conduit means into the coal gasifier" (col. 2, lines 59-64). There is no reasonable manner by which to construct the disclosure of Bissett as allegedly teaching any feature that can reasonably be considered to correspond to feeding the whole mixture to a combustion furnace or gasification reactor, wherein the whole mixture is transferred between an inlet of the heater and the combustion furnace or gasification reactor by a pump. The coal gasifier in Bissett is much farther downstream from the entrained bed dryer, i.e., at the other end of a suitable conduit means, and it is dried coal that is passed into that coal gasifier after being separated from the steam. Construing Bissett in the manner that the Office Action does requires ignoring several of the positively recited features of the pending claims.

In Bissett, the "whole mixture" is never fed to the gasification reactor. The portion of Bissett that the Office Action relies upon as suggesting this feature specifically discusses the drying process occurring in the entrained bed dryer prior to any mixture being fed to a cyclone

separator then to a gasifier. Attempting to construct the disclosure of Bissett to support the conclusions made by the Office Action in this regard is erroneous.

2. Bissett Would Not Have Suggested The Claimed Range Of Pressure Differentials

Independent claim 1 further recites, among other features, wherein the whole mixture is transferred between an inlet of the heater and the combustion furnace or gasification reactor by a pump, a discharge pressure at the pump is higher than an inner pressure in the combustion furnace or gasification reactor at least by 1.5 MPa and not higher than 22.12 MPa.

The Office Action asserts, with reference to col. 3, lines 32-37, "pressure at discharge of pump will inherently be higher than in the furnace or reactor." This assertion is incorrect.

The relied upon portion of Bissett actually teaches that "[t]he centrifugal pump 18 is also coupled to a high-pressure pump generally shown at 22 through a conduit 24 with this high pressure pump providing a pressurization of the slurry to a pressure which is adequate for introduction into a gasifier operable at a pressure in the range of about 100 to 1500 PSIA." The analysis of the Office Action fails with regard to this reference for at least the following reasons. First, it is not shown in any manner where specifically Bissett may suggest a discharge pressure at the pump is higher than an inner pressure in the combustion furnace or gasification reactor at least by 1.5 MPa and not higher than 22.12 MPa. This range is very specific and not, in any manner, suggested by the Bissett reference, nor is any specific portion of Bissett cited for allegedly disclosing such a range.

Second, to the extent that the Office Action relies on a theory of inherency for some feature that is not explicitly disclosed, the Office Action fails to meet the appropriate standard in that it has not been adequately shown that the relied-upon feature of a higher pressure as recited in the pending claims must necessarily flow from the teachings of the Bissett

reference. It is well established that inherency "may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ 2d 1949, 1950-51 (Fed. Cir. 1990). Citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. App. & Inter. 1990), MPEP §2112 state "[I]n relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the alleged inherent characteristic necessarily flows from the teachings of the applied prior art" (emphasis in original). This standard is clearly not met with the assertion that the pressure at the discharge pump will inherently be higher than in the furnace or the reactor. There are several factors by which this may not be true and therefore the allegedly inherent characteristic does not necessarily flow from the teachings of the Bissett reference.

Further, when the prior art teaches a range within, overlapping, or touching the claimed range, but the reference provides no specific examples falling within the claimed range, a generally disclosed range may not anticipate the specific range set forth in the pending claims. In order to anticipate the specific claimed range, the allegedly anticipating range must be "disclosed in the [applied] reference with 'sufficient specificity to constitute an anticipation under the statute.'" The MPEP discusses what constitutes "sufficient specificity." When the claim recites a narrow range, particularly when some benefit is attributable to the narrow range, and a reference teaches a broad range, the Examiner must exercise specific care, which Appellant does not believe has been exercised in this case in showing that the allegedly corresponding ranges disclosed with sufficient specificity that constitute anticipation. Certainly with the assertion that the pressure at the discharge pump will inherently be higher than in the furnace or the reactor, there is not sufficient specificity to anticipate the claimed range.

**3. The Office Action Too Broadly Applies The Concept
Of Discovering Optimum Or Workable Ranges By
Applying Only Routine Skill In The Art**

The claimed subject matter relies on a combination of many features. None of these features have been shown to be a specific result effective variable that was recognized in the prior art. Failing in meeting this precondition, therefore, the Office Action overly broadly construes what can reasonably be considered as being discoverable as optimum or workable ranges involving only routine skill in the art. The claims recite specific combinations of separate variables in specific ranges. There is no manner by which, without undue experimentation, one of ordinary skill in the art could have arrived at these combinations of features given the disclosure of Bissett, even if combined with the disclosure of Bachman.

**B. BISSETT AND BUCHANAN ARE NOT COMBINABLE
IN THE MANNER SUGGESTED BY THE OFFICE ACTION**

Throughout prosecution of this application, Appellant has argued that the nozzle of Bissett could not reasonably be considered to correspond to the feature, an inner diameter of the pipe in the heater becomes larger gradually or stepwise along a direction of the flow of the mixture, so that the water in the mixture is gradually or stepwise converted into a form of steam as is positively recited, among other features, in independent claim 1.

The analysis of the Office Action with regard to an inner diameter of the pipe in the heater becoming larger gradually along a direction of flow appears to concede that Appellant's arguments in this regard have now been accepted. It is understood that it is for this reason that the Office Action combines the Buchanan reference with the Bissett reference in an effort to render obvious at least this feature recited in the pending claims. This particular analysis of the Office Action fails for at least the following reason.

1. Buchanan Does Not Make Up For The Shortfall In The Application Of Bissett To The Subject Matter Of The Pending Claims

Buchanan teaches a vortex burner, in which air is fed at a tangential angle to cause a vortex so that fuel is mixed with air. The Office Action refers to element 26 of Buchanan as allegedly suggesting features positively recited in the pending claims. This conclusion fails for at least the following reason.

Buchanan states "[t]he innermost refractory layer 24 includes an annular fillet or conical bottom portion 26 surrounding the air and fuel inlet opening 27 at the base of the combustion chamber" (col. 2, lines 48-51). Further, Buchanan states the action or effect of the conical bottom portion or angular fillet 26 as follows:

In particular, it should be noted that the angle of the spray cone of the fuel emitted from the end of the fuel tube 48 is substantially the same as the included angle between the angular fillet 26. Preferably, these angles of the fuel spray and the cone are kept within the range of 90° to 100°.

The provision of the conical bottom at this angle adds significantly to the combustion stability and shapes the fuel-air sprays and prolongs the swirling motion of the air entering the combustion chamber. In addition, the cone fillet 26 prevents and overly swirled air stream which may exit the air chamber from expanding into too big an angle which would result in poor fuel-air mixing. In other words, the provision of the fillet 26 presents an upper limit to the angle of divergence that the swirling air exiting the sleeve 38 may assume (col. 3, lines 44-59).

Thus, Bissett teaches that the conical bottom portion or angular fillet 26 is to provide combustion stability, to shape the fuel-air sprays, to prolong the swirling motion of air entering the combustion chamber and to prevent an overly swirled air stream. The Office Action mentions that this configuration of the angular fillet 26 in Buchanan may be considered as being taught "for the purpose of regulating the expansion of the vortex so that vaporization is assisted." This conclusory statement is not supported by the disclosure of Buchanan in that (1) Buchanan does not suggest "regulating" the expansion of the vortex; and

(2) to any extent that Buchanan may be considered to have suggested regulation of the expansion of the vortex, there is no suggestion that such regulation may assist in vaporization.

Even if the conclusory statement were taken as true, it is unclear how the objective of regulating the expansion of the vortex so that vaporization is assisted can reasonably be considered as, in any way, corresponding to features provided for the purpose that "the water in the mixture is gradually or stepwise converted into a form of steam," as is positively recited, among other features, in independent claim 1. Vortex regulation as in Buchanan is not steam conversion, nor would it have reasonably suggested steam conversion.

2. No Predictability To The Asserted Combination, With Any Reasonable Expectation Of Success, Has Been Shown

Buchanan relates to a burner structure itself. It is unclear, even given the combination of these disclosures, how one of ordinary skill in the art could reasonably be considered to have combined these references in the manner suggested with any degree of predictability or any reasonable expectation of success. In fact, modifying the Bissett reference in the manner suggested by the Office Action with the addition of any structure from Buchanan would likely require such significant modification of Bissett to render the proposed combination improper.

The proper standard to determine obviousness requires (1) that the Examiner step backward in time into the shoes of the hypothetical "person of ordinary skill in the art," (2) that "[i]n view of all of the factual information, the Examiner must then make a determination whether the claimed invention 'as a whole' would have been obvious at the time to that person," and (3) that any knowledge gained from Appellant's disclosure must be put aside at reaching this determination in order to avoid the tendency to resort to the impermissible application of hindsight reasoning, as discussed above. Clearly, there is nothing in Bissett or Buchanan to suggest that one of ordinary skill in the art at the time of Appellant's invention would have, in any obvious way, predictably combined these references in the manner

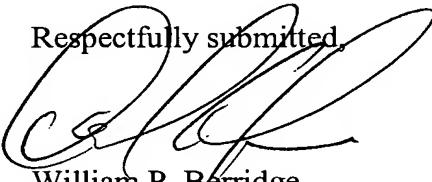
suggested by the Office Action. Further, the required showing has not been made by any objective evidence of record. To any extent that Buchanan teaches a variable diameter pipe, as asserted by the Office Action, it is not a reasonable conclusion upon which to base the assertions that one of ordinary skill in the art would have predictably combined Buchanan with Bissett in the manner suggested by the Office Action with any reasonable expectation of success in achieving the objectives which are intended to be achieved by, and in the manner of, the subject matter of the pending claims.

Even post-*KSR*, the analysis supporting an obviousness rejection must be explicit. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. ___, 127 S. Ct. 1727 (2007). The Supreme Court in *KSR* approved the conclusions set forth in the decision of the Federal Circuit in *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006) that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." This standard is not met here with the conclusory statement that it would have allegedly been obvious to modify Bissett by including a gradually larger or stepwise pipe, as allegedly taught by Buchanan, for the purpose of regulating the expansion of the vortex so that the vaporization is assisted.

Finally, exemplary rationales to guide the obviousness analysis in supporting a rejection under 35 U.S.C. §103 in light of the Supreme Court's decision in *KSR* have been provided. The mandate of this guidance is that "[t]he key to supporting any rejection under 35 U.S.C. §103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." The pending obviousness rejections do not comply with this standard, nor is any attempt made by the Office Action to frame the asserted obviousness rejection over this combination of applied references under any of the exemplary rationales set forth in the Patent Office's guidance.

VIII. CONCLUSION

For any or all of the reasons discussed above, it is respectfully submitted that the rejections are in error as to claim 1 and therefore also to each of the claims depending therefrom. Claims 1-24 are in condition for allowance. For all of the above reasons, Appellant respectfully requests this Honorable Board to reverse the rejections of claims 1-7, 9-18 and 20-24.

Respectfully submitted,

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APPENDIX A - CLAIMS APPENDIX

CLAIMS INVOLVED IN THE APPEAL:

1. A method for feeding a mixture comprising a burnable solid and water to a combustion furnace or gasification reactor, comprising:
 - heating the mixture with a heater to convert at least a part of the water in the mixture into a form of steam; and
 - feeding the whole mixture to a combustion furnace or gasification reactor, wherein the whole mixture is transferred between an inlet of the heater and the combustion furnace or gasification reactor by a pump,
 - a discharge pressure at the pump is higher than an inner pressure in the combustion furnace or gasification reactor at least by 1.5 MPa and not higher than 22.12 MPa,
 - a flow rate of said mixture with at least a part of the water being in a form of steam is from 6 to 50 m/s in a pipe in the heater and in a pipe between an outlet of the heater and an inlet of the combustion furnace or gasification reactor, and
 - an inner diameter of the pipe in the heater becomes larger gradually or stepwise along a direction of the flow of the mixture, so that the water in the mixture is gradually or stepwise converted into a form of steam.
2. The method according to Claim 1, wherein a discharge pressure at the pump is higher than an inner pressure of the combustion furnace or gasification reactor by from 3.0 MPa to 15.0 MPa.
3. The method according to Claim 1, wherein a discharge pressure at the pump is higher than an inner pressure in the combustion furnace or gasification reactor by from 4.0 MPa to 15.0 MPa.
4. The method according to Claim 1, wherein said flow rate is from 8 to 40 m/s.

5. The method according to Claim 1, wherein said flow rate is from 10 to 40 m/s.
6. The method according to Claim 1, wherein an inner diameter of the pipe in the heater becomes larger gradually along a direction of the flow of the mixture, so that the water in the mixture is gradually converted into a form of steam.
7. The method according to Claim 1, wherein an inner diameter of the pipe in the heater becomes larger stepwise along a direction of the flow of the mixture, so that the water in the mixture is stepwise converted into a form of steam.
8. The method according to Claim 7, wherein a pressure reducing valve is provided between sections of the pipe with different diameters, so that the water in the mixture is converted into a form of steam with an aid of the pressure reducing valve.
9. The method according to Claim 7, wherein an inner diameter of the pipe in the heater becomes larger in from 2 to 12 steps.
10. The method according to Claim 7, wherein an inner diameter of the pipe in the heater becomes larger in from 4 to 12 steps.
11. The method according to Claim 7, wherein an inner diameter of the pipe in the heater becomes larger in from 6 to 12 steps.
12. The method according to Claim 7, said non-flammable gas is blown in just downstream of a place where the inner diameter of the pipe becomes larger.
13. The method according to Claim 12, wherein said non-flammable gas is steam, nitrogen, or carbon dioxide.
14. The method according to Claim 1, wherein substantially all of the water is converted into a form of steam.
15. The method according to Claim 1, wherein the heating by the heater is carried out at a temperature of from 150 to 450 degrees C at a pressure of from 1.5 to 22.12 MPa.
16. The method according to Claim 1, wherein the heating by the heater is carried

out at a temperature of from 200 to 400 degrees C at a pressure of from 3.0 to 22.12 MPa.

17. The method according to Claim 1, wherein the heating by the heater is carried out at a temperature of from 200 to 365 degrees C at a pressure of from 4.0 to 20.0 MPa.

18. The method according to Claim 1, wherein the heating is carried out with a heating medium of a temperature of from 200 to 600 degrees C.

19. The method according to Claim 1, wherein a pressure control valve is provided between the outlet of the heater and the inlet of the combustion furnace or gasification reactor.

20. The method according to Claim 1, wherein a pre-heater is provided upstream of the heater.

21. The method according to Claim 20, wherein a pressure reducing valve is provided at the outlet of the pre-heater.

22. The method according to Claim 1, wherein a water content in the mixture comprising a burnable solid and water is from 27 to 80 weight %, relative to the total weight of the mixture.

23. The method according to Claim 1, wherein a water content in the mixture comprising a burnable solid and water is from 30 to 40 weight %, relative to the total weight of the mixture.

24. The method according to Claim 1, wherein a water content in the mixture comprising a burnable solid and water is from 30 to 35 weight %, relative to the total weight of the mixture.

APPENDIX B - EVIDENCE APPENDIX

NONE

APPENDIX C - RELATED PROCEEDINGS APPENDIX

NONE